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SUBJECT: SIXTH COMMITTEE DEBATE ON THE REPORT OF THE
INTERNATIONAL LAW COMMISSION

¶1. SUMMARY: The Sixth Committee held its debate on the report of the fifty-ninth session of the International Law Commission (ILC) from October 29 through November 6. ILC Chairman Ian Brownlie (UK) attended sessions from October 29 through November 2 to present the ILC report to the Sixth Committee and to participate in the annual interactive dialogue between Committee delegates and ILC members. Legal Advisers from many capitals also participated in the Sixth Committee's ILC debate, and the annual informal meeting of Legal Advisers. END SUMMARY.

¶2. During the Sixth Committee's debate, 59 delegations took the floor to comment on specific chapters of the ILC's report on its fifty-ninth session (UN document A/62/10): Finland (on behalf of Denmark, Iceland, Norway, and Sweden); Benin (on behalf of the Africa Group); Denmark (on behalf of Iceland, Finland, Norway, and Sweden); Sweden (on behalf of Denmark, Iceland, Finland, and Norway); Algeria; Argentina; Australia; Austria; Belarus; Belgium; Brazil; Bulgaria; Canada; Chile; China; Colombia; Cuba; Cyprus; Czech Republic; Egypt; El Salvador; France; Germany; Greece; Guatemala; Hungary; India; Indonesia; Iran; Ireland; Israel; Italy; Japan; Kenya; Malaysia; Mexico; Netherlands; New Zealand; Nigeria; Philippines; Poland; Portugal; Republic of Korea; Romania; Sierra Leone; Slovakia; Slovenia; South Africa; Sri Lanka; Switzerland; Syria; Thailand; the Democratic Republic of the Congo; the Russian Federation; Turkey; United Kingdom; United States; Uruguay; and Venezuela.

¶3. Department Legal Adviser John Bellinger delivered the U.S. statement on chapters 1 - 3 (introduction and other decisions), chapter 6 (expulsion of aliens), chapter 7 (effects of armed conflict on treaties), and chapter 8 (responsibility of international organizations) of the ILC's report. The U.S. also spoke on chapter 4 (reservations to treaties), chapter 5 (shared natural resources), and chapter 9 (obligation to extradite or prosecute).

¶4. ILC Chairman Ian Brownlie (UK) began his introduction of the report by underscoring the crucial role of governments' feedback on the ILC's work. The input governments provided, either directly or through the Sixth Committee, was central to the effective codification and development of international law and was also a crucial aspect of the Commission's working methods, Brownlie emphasized. He added that the views of governments were particularly important for the Commission when considering topics on which little State practice exists. During the interactive dialogue with the Sixth Committee, the special rapporteurs and Chairman Brownlie reiterated the Commission's desire to receive more frequent, detailed, and considered reactions from governments on the ILC's work.

¶5. Turning to administrative issues, Brownlie urged delegations to reinstate honoraria for Special Rapporteurs, noting the increasing complexity of topics under consideration by the Commission. Brownlie also recommended establishing a trust fund to address the ILC Yearbook's

backlog and publish the Yearbook and other ILC documents in all UN languages. In his concluding remarks, Brownlie said he looked forward to continuing his dialogue with delegations during the ILC 60th anniversary meeting in Geneva from May 19 - 20 and encouraged legal advisers to attend.

¶6. Reservations to Treaties (Chapter 4): The ILC considered the 11th and 12th reports of the Special Rapporteur, and referred 35 draft guidelines to the Drafting Committee. The ILC also adopted nine draft articles on the determination of the object and purpose of a treaty and the incompatibility of a reservation with the object and purpose of the treaty. Most delegations welcomed the draft guidelines; however, many delegations, including Italy, Belgium, Greece, Egypt, and Canada, said the guidelines should not go beyond the Vienna Convention on the Law of Treaties. Some delegations also argued there was no need for a separate regime for reservations to certain categories of treaties, such as human rights treaties.

¶7. Shared Natural Resources (Chapter 5): The ILC examined the fourth report of the special rapporteur. States with significant aquifer resources, such as Argentina and Guatemala, generally welcomed the draft articles. Most delegations approved of the ILC's recommendation to consider the articles on transboundary aquifers separately from oil and natural gas. The United Kingdom saw no role for the ILC in considering oil and natural gas, since issues concerning both resources were adequately handled through bilateral arrangements. As to the final form of the draft articles on transboundary aquifers, Russia, Portugal and Argentina supported the negotiation of a binding convention. Most delegations, however, favored non-binding measures. China, for instance, suggested a non-binding declaration, while Turkey, Uruguay, Guatemala, New Zealand, and Malaysia favored

non-binding guidelines or principles.

¶8. Expulsion of Aliens (Chapter 6): The ILC considered the second and third reports of the special rapporteur dealing with the scope, definitions and general provisions related to the expulsion of aliens. In general, delegations expressed the need to strike a balance between a State's sovereign right to expel those illegally on its territory and the need to uphold international and human rights law. With regard to territory, China said the scope of the articles should include the expulsion of aliens inside immigration zones, and not just the territory of a State. On refugees, Egypt, South Africa, and China said the draft articles should not go beyond the protections contained in the 1951 Convention on the Status of Refugees and its Protocols. Greece and Romania saw no need to include terrorism as a separate ground for expulsion because acts of terrorism, they argued, were covered under national security grounds on which States can expel aliens. On the other hand, Turkey favored a reference to terrorism, arguing that reliance on the term "national security" could create a loophole allowing some to abuse refugee status in States that do not view certain terrorist acts as a threat to national security. As to general definitions, most delegations preferred the use of the term "national" rather than "ressortissant" when describing the concept of "alien".

¶9. Effects of Armed Conflicts on Treaties (Chapter 7): The ILC established a working group based on the third report of the Special Rapporteur and referred nine draft articles to the Drafting Committee. In general, delegations discussed concerns about the compatibility of the draft articles with the Vienna Convention on the Law of Treaties and the inclusion of internal conflicts and the responsibility of international organizations in the scope of the draft articles. Finland and Poland suggested using the terms "hostilities" and "outbreak of hostilities" rather than "armed conflict", which would better reflect the language used in the Vienna Convention on the Law of Treaties. Finland, Bulgaria, and France commended the inclusion of internal conflicts in the scope of the draft articles.

Russia, however, opposed referring to internal conflicts, arguing that such conflicts did not substantially alter relations between States. Iran, China and Algeria shared Russia's view. As to the inclusion of international organizations, the United Kingdom argued that including treaties entered into by international organizations did not adequately account for the differences between international organizations and States. Canada, Finland, Sri Lanka, India and Greece also argued against including international organizations in the scope of the draft articles.

¶10. Responsibility of International Organizations (Chapter 8): The ILC considered the fifth report of the Special Rapporteur. Some delegations, including Denmark, Bulgaria, Korea and the Netherlands, agreed with the ILC's approach of using the draft articles on State Responsibility as the basis for the articles on the Responsibility of International Organizations. Russia argued that the rules governing the responsibility of international organizations were almost identical to those of States, citing treaties on the Use of Outer Space as an example. Other delegations, such as Portugal, said that the draft articles for international organizations should not duplicate the articles on State responsibility, since international organizations were fundamentally different than States.

¶11. Obligation to Extradite or Prosecute (Chapter 9): Some delegations were unsure about whether an obligation to extradite or prosecute (*aut detere aut judicare*) actually existed in customary international law. Australia and other delegations noted that the obligation to extradite or prosecute was governed by international treaties. Germany doubted whether there was enough agreement among States and sufficient State practice to assume that an obligation existed beyond that covered by treaties. Many delegations also expressed reservations about the ILC's "triple alternative", which suggests that States could meet their obligation to extradite or prosecute by surrendering a criminal to an international criminal tribunal. Russia and New Zealand said the "triple alternative" should not be included in the scope of the ILC's guidelines.

¶12. Programme and Working Methods (Chapter 10): The ILC decided to include "Protection of Persons in Case of Disasters" and "Immunity of State Officials from Foreign Criminal Jurisdiction" as new topics in its current work program and consider the long-term inclusion of the topic "Most-Favored-Nation clause." Many developing states welcomed the inclusion of Protection of Persons in Disasters and the Most-Favored-Nation clause as topics that would address human suffering and developing states' economic concerns. Turning to administrative issues, Poland called

for the restoration of honoraria for Special Rapporteurs and a repeal of the limitation on the length of ILC documentation. Kenya urged the ILC to publish and circulate its reports in a timely manner to allow States more time to prepare comments.

Khalilzad